

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

NEBRASKA BEEF, LTD.,)
a Nebraska Limited Partnership,) CASE NO. 09-cv-107
)
 Plaintiff,)
)
 v.)
)
 ADVANCED FOOD COMPANY , INC.,)
 an Oklahoma Corporation)
)
 Defendant.)
)

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Nebraska Beef, Ltd., and for its Complaint against Defendant, Advanced Food Company, Inc., alleges and avers as follows:

PARTIES

1. Nebraska Beef, Ltd. ("NE Beef") is a Nebraska limited partnership with its principal place of business in Omaha, Douglas County, Nebraska.
2. Upon information and belief, Advanced Food Company, Inc. ("AFC") is an Oklahoma corporation with its principle place of business in Enid, Oklahoma.

JURISDICTION AND VENUE

3. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(a)(1) in that the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs and is between citizens of different states.
4. Venue in this action is proper in the United States District Court for the District of Nebraska, pursuant to 28 U.S.C. § 1331(a)(2) in that a substantial part of events or omissions giving rise to the claims arose within the District.

FACTS

5. NE Beef slaughters and processes cattle for sale to distributors and others including, AFC.

6. Upon information and belief, AFC manufactures, distributes and sells packaged food products, including portion-controlled food for the food industry.

7. The subject matter of this action relates to seven unpaid contracts for goods sold by NE Beef to AFC. The respective contracts were for the sale of goods by NE Beef to AFC and entered into on or about the following dates and in the following amounts:

	<u>Date</u>	<u>Amount</u>
a.	8/04/2008	\$35,717.66
b.	8/11/2008	\$48,634.88
c.	8/18/2008	\$48,717.22
d.	8/25/2008	\$48,751.39
e.	9/04/2008	\$27,540.00
f.	9/04/2008	\$27,540.00
g.	9/12/2008	\$23,716.80

FIRST CAUSE OF ACTION

BREACH OF ORAL CONTRACT

8. Paragraphs 1 through 7 are incorporated as if fully set forth herein.

9. Sometime on or before August 4, 2008, AFC and NE Beef entered into an oral contract for the sale of beef. NE Beef agreed to sell AFC 18,651.1 pounds of Loin Trim. As part of the contract, AFC agreed to pay NE Beef \$35,717.67 for the Loin Trim. A true and correct

copy of Invoice 1243605 is attached hereto as Exhibit "A" and is incorporated herein by this reference.

10. Within a reasonable time from the date the oral contact was made, NE Beef sent to AFC Invoice No. 1243605 which served as a writing in confirmation of the contract. *See* Exhibit A. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

11. Pursuant to the contract, NE Beef processed and shipped the Loin Trim to AFC.

12. AFC accepted the goods.

13. NE Beef fully performed its obligations under the contract.

14. The full balance of \$35,717.67 for AFC's August 4, 2008, Loin Trim order remains due and owing despite NE Beef's demands for payment.

15. AFC breached the contract by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demand for payment.

SECOND CAUSE OF ACTION

BREACH OF ORAL CONTRACT

16. Paragraphs 1 through 15 are incorporated as if fully set forth herein.

17. Sometime on or before August 11, 2008, AFC and NE Beef entered into an oral contract for the sale of beef. NE Beef agreed to sell AFC 25,495.1 pounds of Loin Trim. As part of the contract, AFC agreed to pay NE Beef \$48,634.87 for the Loin Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "B" and is incorporated herein by this reference.

18. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1244035 which served as a writing in confirmation of the contract. *See*

Exhibit B. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

19. Pursuant to the contract, NE Beef processed and shipped the Loin Trim to AFC.
20. AFC accepted the goods.
21. NE Beef fully performed its obligations under the contract.
22. The full balance of \$48,634.87 for AFC's August 11, 2008, Loin Trim order remains due and owing despite NE Beef's demands for payment.
23. AFC breached the contract by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demand for payment.

THIRD CAUSE OF ACTION

BREACH OF ORAL CONTRACT

24. Paragraphs 1 through 23 are incorporated as if fully set forth herein.

25. Sometime on or before August 18, 2008, AFC and NE Beef entered into an oral contract for the sale of beef. NE Beef agreed to sell AFC 25,549.7 pounds of Loin Trim. As part of the contract, AFC agreed to pay NE Beef \$48,717.22 for the Loin Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "C" and is incorporated herein by this reference.

26. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1244446 which served as a writing in confirmation of the contract. *See* Exhibit C. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

27. Pursuant to the contract, NE Beef processed and shipped the Loin Trim to AFC.
28. AFC accepted the goods.

29. NE Beef fully performed its obligations under the contract.
30. The full balance of \$48,717.22 for AFC's August 18, 2008, Loin Trim order remains due and owing despite NE Beef's demands for payment.
31. AFC breached the contract by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demand for payment.

FOURTH CAUSE OF ACTION

BREACH OF ORAL CONTRACT

32. Paragraphs 1 through 31 are incorporated as if fully set forth herein.
33. Sometime on or before August 25, 2008, AFC and NE Beef entered into an oral contract for the sale of beef. NE Beef agreed to sell AFC 26,261.9 pounds of Loin Trim. As part of the contract, AFC agreed to pay NE Beef \$48,751.39 for the Loin Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "D" and is incorporated herein by this reference.
34. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1244835 which served as a writing in confirmation of the contract. *See* Exhibit D. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.
35. Pursuant to the contract, NE Beef processed and shipped the Loin Trim to AFC.
36. AFC accepted the goods.
37. NE Beef fully performed its obligations under the contract.
38. The full balance of \$48,751.39 for AFC's August 25, 2008, Loin Trim order remains due and owing despite NE Beef's demands for payment.

39. AFC breached the contract by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demand for payment.

FIFTH CAUSE OF ACTION

BREACH OF ORAL CONTRACT

40. Paragraphs 1 through 39 are incorporated as if fully set forth herein.

41. Sometime on or before September 4, 2008, AFC and NE Beef entered into an oral contract (Invoice No. 1245378) for the sale of beef. NE Beef agreed to sell AFC 40,800 pounds of 30% Lean Trim. As part of the contract, AFC agreed to pay NE Beef \$27,540.00 for the 30% Lean Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "E" and is incorporated herein by this reference.

42. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1245378 which served as a writing in confirmation of the contract. *See* Exhibit E. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

43. Pursuant to the contract, NE Beef processed and shipped the 30% Lean Trim to AFC.

44. AFC accepted the goods.

45. NE Beef fully performed its obligations under the contract.

46. The full balance of \$27,540.00 for AFC's September 4, 2008, 30% Lean Trim order (Invoice No. 1245378) remains due and owing despite NE Beef's demands for payment.

47. AFC breached the contract (Invoice No. 1245378) by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demands for payment.

SIXTH CAUSE OF ACTION

BREACH OF ORAL CONTRACT

48. Paragraphs 1 through 47 are incorporated as if fully set forth herein.

49. Sometime on or before September 4, 2008, AFC and NE Beef entered into a second oral contract (Invoice No. 1245379) for the sale of beef. NE Beef agreed to sell AFC 40,800 pounds of 30% Lean Trim. As part of the contract, AFC agreed to pay NE Beef \$27,540.00 for the 30% Lean Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "F" and is incorporated herein by this reference.

50. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1245379 which served as a writing in confirmation of the contract. *See* Exhibit F. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

51. Pursuant to the contract, NE Beef processed and shipped the 30% Lean Trim to AFC.

52. AFC accepted the goods.

53. NE Beef fully performed its obligations under the contract.

54. The full balance of \$27,540.00 for AFC's September 4, 2008, 30% Lean Trim order (Invoice No. 1245379) remains due and owing despite NE Beef's demands for payment.

55. AFC breached the contract (Invoice No. 1245379) by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demands for payment.

SEVENTH CAUSE OF ACTION

BREACH OF ORAL CONTRACT

56. Paragraphs 1 through 55 are incorporated as if fully set forth herein.

57. Sometime on or before September 12, 2008, AFC and NE Beef entered into an oral contract for the sale of beef. NE Beef agreed to sell AFC 38,880 pounds of 30% Lean Trim. As part of the contract, AFC agreed to pay NE Beef \$23,716.80 for the 30% Lean Trim. A true and correct copy of the Invoice is attached hereto as Exhibit "G" and is incorporated herein by this reference.

58. Within a reasonable time from the date the oral contract was made, NE Beef sent to AFC Invoice No. 1246026 which served as a writing in confirmation of the contract. *See* Exhibit G. AFC received the Invoice and did not provide to NE Beef written objection to the contents of the Invoice within 10 days after the Invoice was received.

59. Pursuant to the contract, NE Beef processed and shipped the 30% Lean Trim to AFC.

60. AFC accepted the goods.

61. NE Beef fully performed its obligations under the contract.

62. The full balance of \$23,716.80 for AFC's September 12, 2008, 30% Lean Trim order remains due and owing despite NE Beef's demands for payment.

63. AFC breached the contract by failing to pay NE Beef for the goods provided pursuant to the contract despite repeated demand for payment.

EIGHTH CAUSE OF ACTION

UNJUST ENRICHMENT

64. Paragraphs 1 through 63 are incorporated as if fully set forth herein.

65. As set forth above, NE Beef rendered and AFC accepted substantial goods from NE Beef, as evidenced in Exhibits A through G.

66. AFC has had the benefit and use of NE Beef's goods without paying NE Beef any of the balance due.

67. AFC has been unjustly enriched in the amount of at least \$260,617.95 by its acceptance of NE Beef's goods and its nonpayment of the balance due.

WHEREFORE, Nebraska Beef, Ltd. prays the Court enter judgment against Defendant Advanced Food Company, Inc., on the above described contracts and for the above described goods provided in the following amounts:

	<u>Date</u>	<u>Amount</u>
a.	8/04/2008	\$35,717.66
b.	8/11/2008	\$48,634.88
c.	8/18/2008	\$48,717.22
d.	8/25/2008	\$48,751.39
e.	9/04/2008	\$27,540.00
f.	9/04/2008	\$27,540.00
g.	9/12/2008	\$23,716.80

for the total amount of TWO HUNDRED SIXTY THOUSAND, SIX HUNDRED SEVENTEEN and 95/100 DOLLARS (\$260,617.95) plus accrued interest, cost of this suit, attorney fees and other such relief as the Court deems just and proper.

Plaintiff requests trial by jury in Omaha, Nebraska.

DATED this 23rd day of March, 2009.

NEBRASKA BEEF, LTD., Plaintiff

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